EM Abdul Mutalib & Anor v Foo Meow Tat

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 11-36 0F 2001
KAMALANATHAN RATNAM J
12 SEPTEMBER 2001

Landlord and Tenant *— Controlled premises — Determination — Notice to terminate during transitional period — Whether valid — Control of Rent (Repeal) Act 1997*

The plaintiff/appellant was the registered owner of the premises, which was rent controlled, while the first defendant was the tenant of the same. The plaintiff had pleaded that the second defendant was a squatter, whereas the defence was that he was the servant of the first defendant. By way of a notice in August 1999, the plaintiff demanded vacant possession of the premises from the first defendant. The plaintiff informed the first defendant that pursuant to the statutory notice, which required a provision of a period of three months for the tenant to vacate the premises, the tenancy would terminate on 31 November 1999. By a separate notice dated 20 January 2000, the plaintiff also demanded from the second defendant vacant possession of the premises by 30 April 2000. Having heard the plaintiff's application, the learned magistrate gave the order for vacant possession with costs against both the defendants. The defendants appealed.

Held, allowing the appeal:

(1) From 1 September 1997, when the Control of Rent (Repeal) Act 1997 came into force, and up to the end of the transitional period, namely, 31 December 1999, there was a deemed tenancy existing between the landlord and the tenant, and that it was only after the expiration of this deemed tenancy that the landlord had the right to vacant possession. Once he had evoked an intention to recover vacant possession, then s 11(3) provided that the statutory notice requiring vacant possession must provide for a period of three months for the tenant to vacate the premises (see pp 47H–48A).

(2) The landlord gave a notice dated 23 August 1999 to the first defendant. This notice was given within the tperiod when the landlord had no right to vacant possession. The notice was clearly flawed. Further, the notice required vacant possession by 31 December 1999 when the tenant still had the statutory presumptive tenancy which expired on 31 December 1999. This notice was only served on the first defendant. As for the case against the second defendant, the plaintiff had not shown that he was at any time a tenant. The defence of both the defendants stated that the second defendant was an employee of the first defendant. Therefore, there was no question of the second defendant being a tenant of the plaintiff (see p 48A–C).

(3) Whilst the second notice would have been valid in respect of the first defendant, unfortunately, in his pleadings the plaintiff had admitted that he was relying on the first notice in respect of the first defendant. Since that notice was clearly flawed and as the case against the second defendant ought not to have proceeded in the light of the defendants' admission that the second defendant was only a servant of the first defendant, the court allowed the appeal of the defendants with costs (see p 48C–D).

[Bahasa Malaysia summary

Plaintif/perayu merupakan pemilik berdaftar premis tersebut yang di bawah kawalan sewa, manakala defendan pertama adalah penyewa. Plaintif telah menyatakan bahawa defendan kedua merupakan setinggan, manakala pembelaan defendan kedua adalah beliau merupakan pekerja defendan pertama. Melalui notis bertarikh Ogos 1999, plaintif menuntut milikan kosong premis tersebut dari defendan pertama. Plaintif memberitahu defendan pertama bahawa menurut notis berkanun, yang memerlukan peruntukan tempoh selama tiga bulan untuk penyewa memberi milikan kosong, penyewaan tersebut akan tamat pada 31 November 1999. Melalui notis yang lain yang bertarikh 20 Januari 2000, plaintif juga telah menuntut milikan kosong premis tersebut dari defendan kedua pada 30 April 2000. Setelah mendengar permohonan plaintif, majistret yang arif telah memberi perintah untuk milikan kosong dengan kos terhadap kedua-dua defendan tersebut. Defendan-defendan merayu.

Diputuskan, membenarkan rayuan tersebut:

(1) Semenjak 1 September 1997, apabila Akta Kawalan Sewa (Pemansuhan) 1997 berkuat kuasa dan sehingga ke penamatan tempoh peralihan, iaitu pada 31 Disember 1999, terdapat tempoh anggapan penyewaan di antara tuan tanah dan penyewa, dan hanya setelah tempoh ini tamat tuan tanah mempunyai hak kepada milikan kosong. Apabila beliau menimbulkan niat untuk mendapat kembali milikan kosong, s 11(3) memperuntukkan bahawa notis berkanun untuk menuntut milikan kosong mesti memperuntukkan tempoh selama tiga bulan untuk penyewa memberi milikan kosong premis tersebut (lihat ms 47H–48A).

(2) Tuan tanah telah memberi notis bertarikh 23 Ogos 1999 kepada defendan pertama. Notis ini telah diberi semasa tempoh peralihan iaitu semasa tuan tanah tidak mempunyai hak untuk menuntut milikan kosong. Notis tersebut jelas cacat. Lagipun, notis tersebut menuntut milikan kosong pada 31 Disember 1999 semasa penyewa masih mempunyai penyewaan berkanun yang tamat pada 31 Disember 1999. Notis ini hanya disampaikan ke atas defendan pertama. Bagi kes defendan kedua, plaintif tidak menunjukkan bahawa defendan kedua merupakan penyewa.

Pembelaan kedua-dua defendan menyatakan bahawa defendan kedua merupakan pekerja defendan pertama. Oleh itu, tidak menjadi persoalan bahawa defendan kedua merupakan penyewa kepada defendan pertama (lihat ms 48A–C).

(3) Walaupun notis kedua adalah sah terhadap defendan pertama, plaintif, di dalam plidingnya menyatakan bahawa beliau bergantung kepada notis pertama berkenaan dengan defendan pertama. Memandangkan notis tersebut jelas adalah cacat dan kes terhadap defendan kedua tidak sepatutnya diteruskan memandangkan pengakuan defendan-defendan bahawa defendan kedua merupakan pekerja defendan pertama, mahkamah membenarkan rayuan defendan-defendan dengan kos (lihat ms 48C–D).]

Notes

For cases on determination of controlled premises, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 57–59.

Legislation referred to

Control of Rent (Repeal) Act 1997 s 3, s 6(1), s 6(2), s 11(3)
Rent Control Act 1966
Subordinate Courts Rules 1980 O 26A

S Thevarayan (*Subbiah & Co*) for the appellant.
Azman bin Mohd Kassim (*Lim, Ooi & Partners*) for the respondent.

Kamalanathan Ratnam J: The plaintiff/appellant was at all material times the registered owner of premises 484-A Main Road, 11900 Bayan Lepas, Pulau Pinang ('the premises'). The first defendant was at all material times the tenant of the said premises. The plaintiff had pleaded that the second defendant was a squatter, whereas the defence was that he was the servant of the first defendant. The said premises was rent-controlled.

By way of a notice dated 23 August 1999, the plaintiff demanded vacant possession of the said premises from the first defendant. In the said letter, the plaintiff informed the first defendant that pursuant to the statutory notice, which required for a provision of a period of three months for the tenant to vacate the premises, the tenancy would terminate on 31 November 1999. Then by a separate notice dated 20 January 2000, the plaintiff also demanded from the second defendant, vacant possession of the said premises. This letter required the second defendant to give vacant possession by 30 April 2000.

The learned magistrate, having heard the plaintiff's application made pursuant to O 26A of the Subordinate Courts Rules 1980, gave the order for vacant possession with costs against both the defendants together with mense profits. Against that order, both defendants appealed. I heard the arguments today and this is my judgment delivered the same day.

Findings of the court

Since the said premises was built in 1940, it was accordingly protected by the Rent Control Act 1966 ('the Act'). It was realized after nearly 30 years that the Act shackled development and put landlords at the mercy of tenants, who, whilst enjoying occupancy of premises at choice areas, paid pittance as rentals since they were protected by the Act. To open up such choice areas for development and for more equitable valuation of rentals, the Control of Rent (Repeal) Act 1997 ('the CRA') was promulgated. However, the CRA made certain provisions to give the tenant some measure of protection. The CRA created a 'transitional period' which was a period commencing on 1 September 1997 and ending on 31 December 1999. Section 3 of the CRA provided that upon the repeal of the Act any tenancy between a landlord and the tenant before the date of the repeal would be deemed to have ceased. However pursuant to s 6(1) of the CRA, any tenant, subtenant or joint tenant who:

(a) was in actual occupation of the premises on the date of the repeal of the Act (which came into force on 1 September 1997); and

(b) could have lawfully continued to occupy the premises but for the repeal of the Act,

shall be deemed to have entered into a tenancy with the landlord as from the date of the repeal of the Act, and pursuant to s 6(2) of the CRA, unless sooner terminated by mutual consent of the parties, a tenancy deemed to have been entered into under sub-s (1) shall be in force until the expiry of the transitional period.

Section 11 of the CRA now comes to the landlord's rescue. The relevant parts of the section in respect of this case, read as follows:

> (1) Upon the expiry of the transitional period under sub-s 5(1) as the case may be, all tenancies deemed to have been entered into between the landlords and tenants under sub-s 6(1) shall cease to be in force and the landlords shall thereafter:
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> (a) have the right to vacant possession of the premises from the tenants without payment of any compensation; and
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> (b) be entitled to any rental accrued and remaining unpaid from the tenants as at the date of the expiry of the transitional period.
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> (2) A landlord who wishes to exercise his right under para (1) (a) shall serve on the tenant a notice to vacate the premises.
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> (3) The notice referred to in sub-s (2):
>
> (a) shall provide for a period of three months for the tenant to vacate the premises; and
>
> (b) ...

It is obvious therefore that, as in this case from 1 September 1997, when the Act came into force and up to the end of the transitional period, namely, 31 December 1999, there is a deemed tenancy existing between the landlord and the tenant, and that only after the expiration of this deemed tenancy that the landlord has the right to vacant possession. Once he has

evoked an intention to recover vacant possession, then s 11(3) of the CRA provides that the statutory notice requiring vacant possession must provide for a period of three months for the tenant to vacate the premises.

In the case before me, the landlord gave a notice dated 23 August 1999 to the first defendant. This notice was given clearly within the transitional period when the landlord had no right to vacant possession. The notice was clearly flawed. Further, the said notice required vacant possession by 31 December 1999 when the tenant still had the statutory presumptive tenancy which expired on 31 December 1999. This notice was only served on the first defendant. As for the case against the second defendant, the plaintiff had not shown that he was at any time a tenant. The defence of both the defendants stated that the second defendant was an employee of the first defendant. Therefore, there is no question of the second defendant being a tenant of the plaintiff.

Whilst the second notice would have been valid in respect of the first defendant, unfortunately in his pleadings the plaintiff has admitted that he was relying on the first notice in respect of the first defendant. Since that notice was clearly flawed and as the case against the second defendant ought not to have proceeded in the light of the defendants' admission that the second defendant was only a servant of the first defendant, I allowed the appeal of the defendants with costs.

Appeal allowed.

Reported by Wong Ee Lynn